United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 11-592**
	)	**Issued: October 6, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 10, 2011 appellant, through her representative, filed a timely appeal from the September 27, 2010 merit decision of the Office of Workers' Compensation Programs, which denied continuing compensation. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation benefits for the accepted medical conditions; and if so, (2) whether appellant met her burden to establish that she is entitled to continuing compensation beginning September 4, 2009, the date OWCP effectively terminated her benefits.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 18, 2005 appellant, a 58-year-old mail handler/technician, filed a claim for workers' compensation benefits alleging that her bilateral hand and arm conditions were a result of the substantial repetitive duties of her position. OWCP accepted her claim for the medical conditions of left trigger thumb (acquired), right carpal tunnel syndrome and lesion of the left ulnar nerve. It paid compensation for temporary total disability on the periodic rolls.

A conflict arose between Dr. Scott M. Fried, appellant's osteopathic hand surgeon, and Dr. Zohar Stark, an orthopedic surgeon, and OWCP referral physician. Dr. Fried found appellant totally disabled for work. He diagnosed left trigger thumb, right carpal tunnel syndrome and left ulnar neuropathy, among other things. Dr. Fried did not foresee her returning to regular work duties. Dr. Stark found no objective clinical evidence of the accepted medical conditions. He concluded that appellant could return to work with no restrictions or need for further medical treatment.

To resolve the conflict, OWCP referred appellant, together with her medical record and a statement of accepted facts, to Dr. Gary Neil Goldstein, a Board-certified orthopedic hand surgeon, who evaluated appellant on November 20, 2007. Dr. Goldstein related her history and present complaints. He described his finding on physical examination. Dr. Goldstein noted a normal electrodiagnostic study in 2005.

Dr. Goldstein's first diagnosis was symptom-magnification syndrome.[2] He noted a fairly large nodule in the left thumb. Triggering was precipitated on clinical examination. Dr. Goldstein found no sign of carpal tunnel syndrome or brachial plexus or other neuropathy. He concluded that appellant could work in her former occupation.

Dr. Goldstein explained that appellant did have trigger thumbs, left more so than right, but that she described no true triggering currently. So if triggering were to recur upon returning to her former occupation, appellant could have it surgically corrected with an operation requiring zero to two stitches and local anesthesia.

Dr. Fried continued to diagnose left thumb trigger, right carpal tunnel syndrome and left ulnar nerve lesion. He stated that appellant would not return to her previous activity level. Dr. Fried felt early retirement would be the best option medically, as returning to her work activities would exacerbate her symptoms and likely result in the need for further treatment and probably surgery.

[2] "I should point out that[,] if one were to believe the patient's strength testing as her maximum, she would be unable to dress herself, take care of herself or as a 282[-]pound woman even walk. Her strength testing is consistent with overt symptom magnification. If we really were to believe that she could exert zero pounds on tip to tip pinch on the ring and small fingers, it would mean that her hands are basically paralyzed. It makes no sense given the normal EMG by Dr. Richard Read [in 2005]. Again, this makes no sense to what treatment was not insisted upon by the doctor and demanded by the patient. If the patient wishes to retire, so be it, but she is capable working from a mechanical orthopedic standpoint."

OWCP also received a Report of Investigation by the Office of the Inspector General, which determined that appellant was misrepresenting her degree of disability to her physician, to the employer and to OWCP in order to continue to receive workers' compensation benefits.

OWCP asked Dr. Goldstein for an updated evaluation. Dr. Goldstein updated appellant's history and current status. He noted that, after his first evaluation, appellant did not seek treatment until the summer of 2008, when she had some physical therapy and massage therapy. Appellant was seen on an intermittent basis through October 2008, when direct treatment stopped. She stated that she saw Dr. Fried every six months or so, but there was no discussion of additional care.

Dr. Goldstein described his findings on physical examination and reviewed appellant's records. He again diagnosed overt symptom-magnification syndrome. Dr. Goldstein did not find that appellant had any thoracic outlet syndrome, certainly none that was impairing. He noted that triggering of the left thumb could not be precipitated in the current examination.

Dr. Goldstein stated that appellant's left hand would have to be paralyzed, if one were to believe the weakness she attempted to demonstrate. He pointed out that a Ninhydrin test did not confirm any nerve injury in the upper extremity. Further, the splint appellant wore on her left arm served no purpose in the treatment of bracioplexopathy. Dr. Goldstein did not feel that she had any long-term musculoskeletal problem that would reasonably prevent her from working at the employing establishment or in a variety of other occupations.

OWCP asked Dr. Goldstein to address the accepted conditions of left trigger thumb, right carpal tunnel syndrome and lesion of the left ulnar nerve. In a supplemental report, Dr. Goldstein made clear that there were no findings relevant to the right carpal tunnel or ulnar nerve when he examined appellant. He added that appellant had nodules on the A1 pulley but no clinically active triggering: "I can elicit it by provocative maneuvers but she has no day[-]to[-]day problems regarding that." Dr. Goldstein repeated that appellant had no long-term impairment preventing her return to work for the employer in a variety of settings.

Dr. Goldstein clarified that nodules in the A1 pulley are common in the general population and become increasingly common with age and active hand use. Indeed, he had some, but given that they were not causing any triggering problems, appellant needed no additional medical treatment. Dr. Goldstein opined: "At this point and time I do not feel that the patient has any musculoskeletal problems which have been accepted as part of the [accepted employment injury] or its sequelae which would prevent her from working in her usual occupation or others."

In a decision dated September 8, 2009, OWCP terminated compensation benefits for the accepted medical conditions effective September 4, 2009. It found that the weight of the medical evidence, as represented by the opinion of Dr. Goldstein, demonstrated that appellant no longer had any objective findings referable to her employment injury or any continuing injury-related disability.

In a decision dated April 16, 2010, an OWCP hearing representative affirmed the termination of appellant's compensation benefits. She found that OWCP properly referred

appellant to Dr. Goldstein to resolve the conflict in medical opinion and appropriately referred appellant back to the same doctor for a supplemental report and clarification. The hearing representative concluded that his opinion was entitled to special weight.

Appellant requested reconsideration and submitted the January 29, 2010 report of Dr. David Weiss, an osteopath, who related her history and current complaints. Dr. Weiss described his findings on physical examination and reviewed appellant's medical records. He diagnosed, among other conditions, history of left trigger thumb, right carpal tunnel syndrome and left ulnar nerve neuropathy at the cubital tunnel. Dr. Weiss offered an impairment rating of eight percent for the left upper extremity, five percent for the right upper extremity, and seven percent for the left lower extremity. Appellant argued that this evidence confirmed that appellant still suffered residuals of the accepted medical conditions.

In a decision dated September 17, 2010, OWCP reviewed the merits of appellant's claim and found that the argument and medical documentation she submitted were of insufficient probative value to warrant a modification of its prior decision to terminate benefits.

On appeal, appellant's representative argued: Dr. Fried confirmed residuals of the accepted medical conditions. Dr. Goldstein did not base his opinion on an accurate medical history because he reviewed electrodiagnostic studies obtained in 2005 but not studies obtained in following years. He acknowledged triggering on physical examination and indicated there were signs of carpal tunnel syndrome, though he failed to demonstrate "appropriate testing." Dr. Goldstein did not demonstrate an awareness of appellant's job requirements.

Dr. Goldstein agreed that appellant had bilateral thumb triggering and that surgery was warranted; therefore, his initial report should not carry the weight of the medical evidence. His addendum reports should not be given special weight in light of the fact that OWCP did not demonstrate that it selected him from the Physician's Directory System (PDS) to conduct another referee examination almost two years later. Also, as Dr. Goldstein had previously examined appellant, he should have been disqualified from conducting another examination in 2009 and confirmed that appellant still suffered from trigger thumb. He discussed injection treatment but did not explain why surgery was no longer warranted.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to federal employment, OWCP may

[3] 5 U.S.C. § 8102(a).

[4] *Harold S. McGough*, 36 ECAB 332 (1984).

not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5]

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[6] When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

ANALYSIS -- ISSUE 1

OWCP properly referred appellant to Dr. Goldstein, a Board-certified orthopedic hand surgeon, to resolve the conflict between appellant's physician and OWCP's second opinion physician. Dr. Fried found totally disabling residuals of the accepted medical conditions. Dr. Stark reported no objective findings of the accepted medical conditions and concluded that appellant could return to work with no restrictions or need for further medical treatment.

OWCP provided Dr. Goldstein with appellant's medical records and a statement of accepted facts so he could base his opinion on a proper medical and factual history. Dr. Goldstein related an accurate history and described appellant's current complaints. He reported his findings on a thorough physical examination. Dr. Goldstein reviewed multiple records including, but expressly not limited to the records he listed in his report.

Dr. Goldstein concluded that appellant had no sign of carpal tunnel syndrome or any other entrapment neuropathy. He acknowledged that appellant had a fairly large nodule in her left thumb, and he could precipitate triggering on his initial clinical examination. Appellant described no true triggering currently, so there was no reason she could not return to her former occupation. Dr. Goldstein's opinion is sound, rational and logical. It is supported by his findings on physical examination, appellant's history and current complaints, and his review of the medical record, including a normal electrodiagnostic study in 2005. The Board finds that his initial report was sufficient to discharge OWCP's burden to justify the termination of appellant's compensation benefits for the accepted medical conditions.

When Dr. Goldstein provided an updated evaluation 16 months later, the history he reported and his findings on further examination reinforced his prior opinion. Since he last saw her, appellant received no regular medical attention as direct treatment had stopped in October 2008 with no discussion of additional care. Appellant again showed signs of overt symptom-magnification syndrome. On examination, Dr. Goldstein could not provoke triggering of the left thumb, an apparent improvement. With respect to the accepted medical conditions, he

[5] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[6] 5 U.S.C. § 8123(a).

[7] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

found nothing relevant to the right carpal tunnel or ulnar nerve. Dr. Goldstein explained that, although appellant had nodules on the A1 pulley, she had no clinically active triggering or any day-to-day problems that would require additional medical treatment.

The Board finds that Dr. Goldstein's opinion is based on a proper factual and medical history and is sufficiently well reasoned that it must be accorded special weight in resolving the conflict between appellant's physician and OWCP's second opinion physician. The Board therefore finds that OWCP met its burden of proof to justify the termination of compensation benefits for the accepted medical conditions.

On appeal, appellant's representative points to evidence supporting residuals of the accepted medical conditions, such as findings by the attending physician and electrodiagnostic studies after 2005. But residuals do not necessarily establish disability for work or the need for active medical attention. Dr. Goldstein noted that electrodiagnostic studies in 2005 were normal. If later studies showed some evidence of residual neuropathy, he obviously did not find them significant enough to warrant further discussion. In his 2007 report, Dr. Goldstein received multiple records that included, but were not limited to, the several he listed. That does not mean he based his opinion on an inaccurate medical history.

Appellant's representative did not support his argument that Dr. Goldstein failed to demonstrate appropriate testing for carpal tunnel syndrome on physical examination. Dr. Goldstein did report a number of negative tests of the upper extremities, including a reverse Phalen's maneuver and Tinel's sign for carpal tunnel syndrome.

As for Dr. Goldstein's awareness of appellant's job requirements, OWCP provided him a statement of accepted facts describing them. He found appellant showed no sign of right carpal tunnel syndrome or left ulnar nerve lesion, and if her left trigger thumb was not clinically active or causing any day-to-day problems, then the accepted medical conditions were no longer causing disability for any work. To be compensable, there must be medical evidence showing that a claimant is currently disabled for work due to an employment-related condition.[8]

Counsel argues that Dr. Goldstein agreed surgery was warranted for appellant's bilateral thumb triggering. But, Dr. Goldstein explained that appellant described no true triggering currently, so there was no reason she could not return to work if she wished. It was on the possibility of future injury that he made the comment that appellant's thumb condition was easily correctable with surgery if the triggering should recur after she returned to work. Fear of future injury or fear of recurrence after returning to work is not compensable.

Counsel argued that OWCP cannot ask an impartial medical specialist for an updated evaluation. The purpose of requesting an update was not to resolve a second conflict that had arisen in the medical opinion evidence, but to ensure that OWCP's termination of benefits was supported by current findings. The attending physician continued to diagnose the accepted medical conditions and to support disability for work. OWCP received a report of investigation suggesting that appellant was misrepresenting the degree of her disability. It found that an updated evaluation was warranted. Dr. Goldstein again explained that appellant had nodules on

[8] *William A. Kandel*, 43 ECAB 1011 (1992); *Mary A. Geary*, 43 ECAB 300 (1991).

the A1 pulley but no clinically active triggering or day-to-day problems, so no additional treatment was needed. He did not change his opinion on the need for surgery.

LEGAL PRECEDENT -- ISSUE 2

Where OWCP meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.[9]

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[10] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[11]

It is not sufficient for the claimant to establish merely that she has disability for work. She must establish that her disability is causally related to the accepted employment injury. FECA provides compensation only for as long as there exists a proven physical or related impairment attributable to the injury. The claimant must submit a rationalized medical opinion that supports a causal connection between her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the current disabling condition is related to the injury.[12]

ANALYSIS -- ISSUE 2

OWCP having met its burden of proof to terminate compensation benefits for the accepted medical conditions, the burden switches to appellant to establish that she is entitled to continuing compensation. To support her request for reconsideration following the hearing representative's decision, appellant submitted an impairment evaluation by Dr. Weiss, an osteopath. Impairment, however, does not establish disability for work or the need for further active medical attention. It is entirely possible to have one without the other.

Dr. Weiss made findings on physical examination, and he diagnosed, among other conditions, "history" of left trigger thumb, right carpal tunnel syndrome and left ulnar nerve neuropathy at the cubital tunnel. He made no attempt to show a causal relationship between these diagnoses and the duties of appellant's mail handler/technician position. Dr. Weiss did not directly take issue with Dr. Goldstein's opinion. The Board finds that Dr. Weiss' impairment

[9] *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

[10] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[11] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[12] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

rating report is insufficient to establish appellant's entitlement to continuing compensation for wage loss or the need for further active medical care. The Board further finds that it does not create a second conflict in medical opinion evidence warranting referral to a second impartial medical specialist. The Board will therefore affirm OWCP's September 27, 2010 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation benefits. The Board also finds that appellant has not met her burden of proof to establish that she is entitled to continuing compensation beginning September 4, 2009, the date OWCP effectively terminated her benefits.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board